



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2019-0590; FRL-10014-25-Region 5]

Air Plan Approval; Designation of Areas for Air Quality Planning

Purposes; Indiana; Redesignation of the Morgan County Sulfur

Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In accordance with the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is redesignating the Morgan County nonattainment area, which consists of Clay and Washington Townships in Morgan County, Indiana, to attainment for the 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). EPA is also approving Indiana's maintenance plan for the Morgan County SO₂ nonattainment area. Indiana submitted the request for approval of the Morgan County area redesignation and maintenance plan on October 10, 2019, and a clarification letter on May 5, 2020. EPA has previously approved Indiana's attainment plan for Morgan County. EPA proposed to approve this action on July 14, 2020 and received no comments.

DATES: This final rule is effective on **[insert date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2019-0590. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID 19. We recommend that you telephone Anthony Maietta, Environmental Protection Specialist, at (312) 353-8777 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8777, maietta.anthony@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background Information

On July 14, 2020, EPA proposed to approve the redesignation of the Morgan County SO₂ nonattainment area to attainment of the 2010 SO₂ NAAQS and to approve Indiana's maintenance plan for the nonattainment area (85 FR 42337). An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking and will not be restated here. The public comment period for the proposed action ended on August 13, 2020. EPA received no comments on the proposal.

II. Final Action.

EPA is redesignating the Morgan County nonattainment area to attainment of the 2010 SO₂ NAAQS. Indiana has demonstrated that the area is attaining the 2010 SO₂ NAAQS and that the improvement in air quality is due to permanent and enforceable SO₂ emission reductions in the nonattainment area. EPA is also approving Indiana's maintenance plan, which is designed to ensure that the area will continue to maintain the 2010 SO₂ NAAQS.

In accordance with 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), EPA finds there is good cause for these actions to become effective immediately upon publication. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1) and U.S.C. 553(d)(3).

Section 553(d) (1) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** "except ... a substantive rule which grants or recognizes an exemption or relieves a restriction." The purpose of this provision is to "give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp. v. Fed. Commc'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA has determined that this rule relieves a restriction because this rule relieves sources in the area of Nonattainment New Source Review (NNSR) permitting requirements; instead, upon the effective date of this action, sources will be subject to less restrictive Prevention of Significant Deterioration (PSD) permitting requirements.

Section 553(d) (3) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** "except ... as otherwise provided by the agency for good cause." The purpose of this provision is to "give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp.*

v. Fed. Commc'n Comm'n, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should "balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling." *Gavrilovic*, 551 F.2d at 1105. EPA has determined that there is good cause for making this final rule effective immediately because this rule does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. On balance, EPA finds affected parties would benefit from the immediate ability to comply with PSD requirements, instead of delaying by 30 days the transition from NNSR to PSD.

For these reasons, EPA finds good cause under both 5 U.S.C. 553(d) (1) and U.S.C. 553(d) (3) for these actions to become effective on the date of publication of these actions.

III. Statutory and Executive Order Reviews.

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d) (3) (E) are actions that affect the status of a geographical area and do not impose any additional regulatory

requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on

a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian

reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of SO₂ national ambient air quality standards in tribal lands.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b) (1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b) (2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Sulfur oxides, Wilderness areas.

Dated: August 26, 2020.

Kurt Thiede,
Regional Administrator, Region 5.

For the reasons stated in the preamble, the EPA amends 40 CFR parts 52 and 81 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.770, the table in paragraph (e) is amended by adding an entry for “Morgan County 2010 Sulfur Dioxide (SO₂) Maintenance Plan” following the entry “Morgan County 2010 Sulfur Dioxide (SO₂) Attainment Plan” to read as follows:

§ 52.770 Identification of plan.

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(e) * * *

EPA--APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* * * * *	* * *		
Morgan County 2010 Sulfur Dioxide (SO ₂) Maintenance Plan	10/10/2019, 5/5/2020	<u>[insert date of publication in the Federal Register]</u> , [Insert Federal Register citation]	
* * * * *	* * *		

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PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

4. Section 81.315 is amended by revising the entry “Morgan

County, IN" in the table entitled "Indiana-2010 Sulfur Dioxide NAAQS [Primary]" to read as follows:

§81.315 Indiana

* * * * *

**INDIANA-2010 SULFUR DIOXIDE NAAQS
[PRIMARY]**

Designated area ^{1 3}	Designation	
	Date ²	Type
* * * * *		
Morgan County, IN	[insert date of publication in the Federal Register]	Attainment
Morgan County (part)		
Clay Township, Washington Township		
* * * * *		

¹Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

²This date is April 9, 2018, unless otherwise noted.

³Porter County will be designated by December 31, 2020.

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